UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BANKERS CONSECO LIFE INSURANCE COMPANY, et al.,

Plaintiffs,

v. 16 CV 7646 (ER)

MOSHE M. FEUER, et al.,

Defendants.

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New York, N.Y.
May 25, 2017
4:08 p.m.

Before:

HON. EDGARDO RAMOS,

District Judge

APPEARANCES

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-and-
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KATHERINE T. McCARTHY

(Case called)

THE COURT: Good afternoon to you all. This matter is on for a premotion conference. However, this is the first time that the parties have appeared before me, and I know that there's been some amount of activity before today. So, Mr. Kaiser or Buckley or Epstein or Aerni, which one of you is going to be able to tell me what's been going on and what this case is about.

MR. KAISER: Sure. Good afternoon, your Honor. In terms of this case, really nothing has gone on. We filed the complaint in September of last year. That was before, of course, the U.S. Attorney in Brooklyn issued indictments in connection with the Platinum Partners' alleged fraud, which included indictments against certain Platinum entities and individuals, one of whom is a defendant in this case, Mr. Levy. So it was shortly after we filed the civil complaint that's before your Honor now that those indictments were issued and the SEC filed its civil enforcement action against the same Platinum entities and a bunch of individual defendants, again including Mr. Levy.

THE COURT: Is Mr. Levy the only defendant here that is under indictment in Brooklyn?

MR. KAISER: Yes, your Honor.

THE COURT: Any other entities that are defendants here that are under indictment in Brooklyn?

MR. KAISER: No, your Honor.

THE COURT: Okay.

MR. KAISER: So in light of the indictments and the fact that we had been in contact after we filed the complaint with the U.S. Attorney and the SEC, we did not immediately serve the complaint. We wanted to continue our investigation based upon information that had become available to us as a result of the indictments issued in Brooklyn, as well as the SEC complaint.

We served the complaint in this action. Defense counsel requested an extension of time to respond. We of course consented. And on their last day that they had to respond to the complaint, they asked for a premotion conference before your Honor on their motion to compel arbitration and that was I believe on March 15.

And since March 15, there hasn't been any activity in the case. The plaintiffs haven't sought to take any discovery in the matter, understanding it's the defendant's position that the entire matter should be sent to arbitration and that it's appropriate for the Court to determine that threshold issue before we move forward with any discovery in this case.

There is also, as the Court is aware from the letters, a companion arbitration that was filed by Bankers and Washington National against Beechwood Reinsurance, who is the respondent in that case. That arbitration is even less

advanced, if possible, than this case.

THE COURT: Who was that arbitration sought before?

MR. KAISER: That arbitration is before the AAA. And the arbitration agreement contemplates a tripartite arbitration panel so that each party to the arbitration agreement appoints a party appointed arbitrator, who has to be a neutral arbitrator under the AAA rules. And then those two party appointed arbitrators select what's colloquially referred to as an umpire.

So the panel has just been constituted recently, so we have our three arbitrators in place, but we have not appeared before the arbitrators. There's been no preliminary organizational meeting or anything else. And, in fact, that is scheduled for June 12 here in New York, which will be the first time that we appear before the arbitration panel.

THE COURT: Am I correct that your clients are the ones that sought the arbitration?

MR. KAISER: We filed the arbitration, your Honor. There is an arbitration provision in the reinsurance treaties with Beechwood that says any dispute "between the parties" has to be subject to mandatory arbitration under the terms of the reinsurance treaties. So we commenced that arbitration on September 29 because we can't sue Beechwood Reinsurance.

I doubt Beechwood Reinsurance will have sufficient funds to satisfy any arbitral award. My understanding is that

the insurance companies they were doing reinsurance deals with, I've heard, have all terminated their reinsurance agreements. I'm not sure if that's true. But I know that they've been trying to sell themselves in light of all of the allegations that have been made not only in this lawsuit, but in the indictments and the SEC complaint concerning Beechwood.

THE COURT: Who represents Beechwood Reinsurance in that arbitration?

MR. KAISER: Locke Lord and Mr. Lipsius.

THE COURT: Okay.

MR. KAISER: I should note that in the indictment of the owners -- and I think this is important to say -- Beechwood Reinsurance was owned by a series of individuals, including Mr. Feuer and Mr. Taylor, but including Murray Huberfeld, who is under indictment here in the Southern District of New York for allegedly trying to bribe Norm Seabrook, the corrections officer union president, to make a $20 million investment in the Platinum funds. And he was actually arrested and indicted I believe it was last June in connection with trying to allegedly bribe Mr. Seabrook into investing in the Platinum funds. He owns a substantial part of Beechwood Reinsurance's holding company stock.

Mark Nordlicht, who is the alleged kingpin of the Platinum Partners fraud and the main individual defendant in the Eastern District criminal action and SEC civil enforcement

action, was another substantial owner of the stock of Beechwood. In fact, the majority of the stock in Beechwood, as alleged in the indictment --

THE COURT: Beechwood?

MR. KAISER: Beechwood Reinsurance -- was owned by Mr. Huberfeld, the guy who allegedly bribed Norm Seabrook; Mr. Nordlicht, the guy who has been indicted in Brooklyn as the kingpin of the Platinum fraud; and Mr. Levy. Mr. Taylor and Mr. Feuer were also shareholders in Beechwood, but I believe, according to the government, they are minority shareholders of Beechwood.

THE COURT: Now, Huberfeld and Nordlicht are not defendants here, correct?

MR. KAISER: They are not defendants here.

THE COURT: What is the status of Mr. Huberfeld's -- if I'm pronouncing that correctly -- what's the status of his indictment, if you know?

MR. KAISER: I believe it's Huberfeld, your Honor, and there was a conference in the case recently and trial is scheduled for October.

THE COURT: And who is that before, what judge, if you know?

MR. KAISER: I'm not sure. I don't know if any of the defense counsel may be aware.

THE COURT: Okay.

MR. KAISER: Along with the criminal actions, there's an SEC civil enforcement action where the SEC petitioned and was granted a receiver over a hedge fund known as PPCO, which is the major domestic fund of the Platinum funds that's the subject of the SEC complaint and which participated in the alleged securities fraud that's set forth in the indictment.

There is another fund called PPVA, which is an international fund. It's headquartered and domiciled in the Cayman Islands, and that fund is currently in liquidation before a Cayman Islands liquidator. And that there's been a lot of cooperation, as I understand it, between the liquidator and the SEC receiver because the group of investors in the funds are, you know, similar.

THE COURT: What is the identity, if any, between the parties before me and the SEC civil enforcement action?

MR. KAISER: Mr. Levy is a defendant in all of the actions -- not the arbitration, of course, but the criminal action, the civil action by the SEC, and this case.

THE COURT: So he's the one that cuts across all three of those actions.

MR. KAISER: He's the individual that cuts across all three of those actions.

THE COURT: Is there an entity that cuts across all three of those actions?

MR. KAISER: Well, not in the caption of any of the

actions, but certainly in the substance of the actions. In the indictment and the SEC complaint, the securities fraud, among other things, but the major securities fraud that's alleged has to do with a company called Black Elk.

THE COURT: Okay.

MR. KAISER: And among other things that are alleged in the indictment and the SEC complaint is that the criminal defendants, including Mr. Levy, controlled Beechwood, the reinsurance company.

And I'll just put a footnote there that a federal bankruptcy judge found on a preliminary injunction application that Platinum had controlled Beechwood as well. But the allegations in the federal indictment in Brooklyn is that Platinum used its control over Beechwood to vote Beechwood's shares of Black Elk stock in a way that stripped senior noteholders, like Beechwood, of their rights --

THE COURT: Beechwood Reinsurance.

MR. KAISER: -- Beechwood Reinsurance, in order to allow Platinum basically to get a superior position on the sale of these Black Elk notes.

It's a little complicated, but the bottom line of the allegation is that Platinum controlled Beechwood to vote shares being held in these reinsurance trusts, these bonds, including bonds our clients owned, in a way that was detrimental to the senior bondholders and was beneficial to Platinum, Nordlicht,

and his coconspirators or alleged coconspirators in the criminal case.

So Beechwood is not a defendant in the criminal case, but it is discussed in the criminal case because it was one of the artifices or vehicles, if you will, under which Nordlicht and Levy, both of whom have substantial or had substantial interests in Beechwood, committed securities fraud, at least according to the government.

So there is a lot of interconnectedness between the different actions, including the SEC receivership and the PPVA liquidation in the Cayman Islands.

THE COURT: What about this bankruptcy proceeding, is that related to this in any way that you mentioned?

MR. KAISER: Well, it was before it was stayed. There was a dispute between the SEC receiver and the trustee in the Black Elk bankruptcy as to which action should proceed because there was quite a lot of money that was involved with these Black Elk bonds and the SEC receiver took the position that those should be receivership assets and that any legal actions with respect to Black Elk should take place here in New York.

THE COURT: And Black Elk is owned by any parties here, if you know?

MR. KAISER: In this court, it's really owned by Platinum.

MR. AERNI: PPVA.

THE COURT: You said nothing had gone on in this case.

MR. KAISER: Well, nothing has gone on in this case, your Honor, but there's been a tremendous amount of activity because you do have a receivership here and a liquidation. You have criminal actions, both in the Southern District and in the Eastern District, and the other substantial criminal cases and substantial civil enforcement action.

THE COURT: Okay. So who wants to speak on behalf of the defendants and what it is that you want me to do?

MR. ZINN: Thank you, your Honor. David Zinn on behalf of Mr. Taylor. We filed the premotion letters with the Court.

THE COURT: Mr. Zinn, you can be seated. Just please speak directly into the microphone.

MR. ZINN: Thank you, your Honor. Just a habit to stand up in court.

THE COURT: I understand.

MR. ZINN: We agree with some of what Mr. Kaiser said, which is that nothing has gone on in this case. And as plaintiffs are wont to do in a lot of cases, they want to talk about criminal indictments. They want to talk about an SEC action. And there are an overlap and one party there, but that is a different case than this case. It raises different issues, it raises different facts, and involves different parties.

In this case, there are two proceedings that have been filed. One by the plaintiffs, the demand for arbitration, and that is ongoing. And as Mr. Kaiser said, there's a hearing scheduled in that case, to which Mr. Taylor is not a party, by the way, next week. Excuse me, June 12.

The second case is this case, obviously, your Honor. And if you look at the two complaints, the demand for arbitration and the complaint in this case, they raise the same issues. When they were first filed, they were verbatim copies of each other. And what they've done is they sued the entity in the arbitration and they've sued my client, Mr. Taylor, who was the president of the company in court. And the cases really raise the same issues. The allegation essentially is that the plaintiffs claim that they entered into this reinsurance agreement with Beechwood, that Beechwood failed to disclose certain facts.

THE COURT: Again, when you say Beechwood, you mean Beechwood Reinsurance?

MR. ZINN: Yes, your Honor.

THE COURT: Okay, because there's a Beechwood Capital. I just want to make sure that I understand and that we keep those two distinct.

MR. ZINN: Thank you, your Honor. It really is all about Beechwood Reinsurance. And the thrust of the allegations, the theory of both cases is exactly the same, that

the plaintiff insurers entered into a reinsurance agreement with Beechwood Reinsurance, that they ceded liabilities to Beechwood Reinsurance, which Beechwood assumed and managed, and they ceded assets to Beechwood Reinsurance, that all the facts were not disclosed to them, they contend -- we dispute that, your Honor -- and that investments were made by the reinsurance company in Platinum related businesses or assets which they associate now with the indictment and claim are bad.

And we dispute and will dispute the valuation of those assets. We think the valuations in this case will prove that the assets and the investments in most instances, if not all, were good investments and paid off.

But the crux of the issue before the Court and the reason why we filed the letters that we filed is this case arises in a very unusual posture because of the fact that there are basically two identical cases that are pending now -- one in the arbitration against the entity, and the other here against the officers. And there is abundant case law which we cited to the Court that provides that in a situation where a nonsignatory to a very broad arbitration clause like this one is sued, that the nonsignatory can move to compel the case to arbitration because otherwise, the federal policy favoring arbitration, which the Court is well aware of, would be undermined because a plaintiff in any case could just sue the officers instead of the entity.

And so the courts have held consistently that an officer can invoke an arbitration clause. And the one here provides that all disputes or differences between the parties arising under or relating to the agreement, the reinsurance agreement, shall be subject to arbitration.

THE COURT: Is there unanimity amongst the defendants that this entire matter should be arbitrated?

MR. ZINN: Yes, there is, your Honor.

THE COURT: Okay.

MR. ZINN: The only argument that the plaintiffs have really made in their papers is that this language in the arbitration agreement, it says, well, this covers agreements or disputes between the parties, that that language somehow ought to change the result here. And, again, courts in this district and the Second Circuit have rejected that argument. They've said you can't get around the arbitration clause that easily because what the clause was intended to cover was that all disputes related to the agreement would be sent to arbitration, regardless of whether they were filed against the entity or an individual associated closely with the entity.

THE COURT: It appears certainly at a surface level that plaintiffs are not looking to avoid their obligation to arbitrate. They're arbitrating against a party against whom they believe arbitration is compelled. So it doesn't appear at least at this point from this perspective that they're looking

to not arbitrate. They're arbitrating.

MR. KAISER: Fair enough, but I think they're looking for two bites at the apple and that's why this case presents itself in such an unusual posture. In most of the cases that we've cited to the Court that have involved situations where a party has been sued in court, in federal court, and sought to compel arbitration, there was no pending arbitration and yet the courts nonetheless, in instances where there were clauses like this one, found that the clauses mandated arbitration.

Here, the record is about as strong as it could be because the plaintiffs, as your Honor correctly acknowledges, they've already acknowledged that this case is arbitrable. They brought it in arbitration. So what they're trying to do here is very unfair, which is to basically subject the entity to litigation in one forum and the individuals to the same litigation -- it's the same issues, same claims in large part -- in a different forum. And that's the reason why we wrote the letter to the Court seeking to file our motion to arbitrate.

THE COURT: Mr. Kaiser, the case law seems to support Mr. Zinn's argument that certainly the officers of the entity, that the signatory to the arbitration agreement can insist upon arbitration. So why aren't those individuals in arbitration?

MR. KAISER: Well, your Honor, first, to begin, I think it's important to look at the actual language of the

arbitration agreements because the Supreme Court has stated over and over again in cases that are not cited in any of the defendants' language that arbitration is a matter of consent, not coercion. And the starting point of the analysis is the arbitration agreement because the Court can't compel arbitration of issues or order parties to arbitrate where it's not expressly contemplated by the agreement. And there's been lots of case law dealing with narrow arbitration clauses such as the one at bar where arbitration is expressly limited to "disputes between the Parties," capital P. And that's exactly what the arbitration provision in the reinsurance agreement says.

THE COURT: Mr. Zinn says this is a broadly worded arbitration provision.

MR. KAISER: It's broad in this respect -- any and all disputes between the parties has to be arbitrated. So if it was just disputes arising under the agreement, that would be narrow. If it was related to or concerning, it's broad. So the scope of the arbitration, meaning the issues that need to be arbitrated, are broad. But, but, the language "between the parties" has been interpreted to be a narrow clause with respect to the parties who can invoke the right to arbitrate and, on the flip side, be bound to arbitrate.

The arbitration agreement here says that only a Party, capital P, may demand arbitration. Only a Party, capital P,

may appoint an arbitrator. Only a Party, capital P, can file a motion in court to enforce an award, that the arbitrator's jurisdiction is limited to resolving disputes between the Parties, capital P. And so the Court -- and we'll obviously address this in detail in our brief -- needs to look at cases that specifically involve the kinds of arbitration agreements that have limitations as to who may invoke the arbitration clause.

Now, I should tell the Court because it's not in any of the parties' letters but there's been some very significant developments in this area of the law over the last few years as a result of a few really seminal Supreme Court decisions. And if I can just spend 60 seconds on each of them, I think it will be helpful for the Court.

THE COURT: Sure.

MR. KAISER: The first case that I'll just briefly discuss is called *Carlisle v. Arthur Andersen* or *Arthur Andersen v. Carlisle* in 2009. And that's a really important case because prior to 2009, federal courts would create these doctrines like equitable estoppel, direct benefits estoppel, alter ego estoppel, agency law, to allow nonsignatories to an agreement to compel arbitration.

It's a pretty big deal when a nonsignatory is allowed to compel arbitration if you think about it. If arbitration is a matter of consent and not coercion and A agrees to arbitrate

with B, then why should it be that C, D, and E get to wiggle into those parties' arbitration agreement. How is that a matter of consent if A only agreed to arbitrate with B, that now A has to arbitrate with C, D, and E.

But the federal courts believed at the time, prior to 2009, that this was a matter of federal common law and that they could develop these doctrines that were really founded in efficiency, as a bunch of courts in the Southern District noted in opinions, and really weren't based on consent. What happened in 2009 is that the United States Supreme Court said, well, sorry, federal courts, but you should have applied state law. You can't just make up your own federal law. The FAA requires you to apply state law. And so whether a nonsignatory can compel arbitration shouldn't be decided by the federal courts based on federal common law, by state law.

So what happened after 2009. After 2009, federal circuit courts expressly abrogated their pre-2009 case law. In fact, the Eleventh Circuit in 2011 said, oops, it was our bad. From now on, courts going forward, ignore everything we said before 2011 and decide these equitable estoppel and agency issues on the basis of state law.

The Fifth Circuit expressly abrogated its law. And within the Southern District and the Eastern District, the courts recognized *Carlisle* and started applying New York state law, Nevada law, Pennsylvania law, Texas law, you name it, if

it was applicable.

So I understand looking at the defendants' letters that they're relying on these Second Circuit cases and the Second Circuit cases look scary because they talk about if you have a litigation that touches upon an agreement that has an arbitration clause or is intertwined with a contractual obligation in an agreement that has an arbitration clause, playing the game of connect the dots, that's enough to send a litigation to arbitration and deprive a plaintiff of his constitutional right to a jury trial.

But the court can't do that anymore after 2009, and the courts in this district have taken that very seriously by applying the law of New York state or the law of any state that might apply. And New York state law, as we will explain in our brief, is actually pretty hostile to this.

There's been an even bigger development in Supreme Court law which is equally, if not more applicable to this case and that development really started in 2010 with a case called *Stolt-Nielsen* where the court held that arbitration was a matter of consent and not coercion and that -- a direct quote from the case, your Honor -- "The parties may specify with whom they choose to arbitrate their disputes." That was a new concept in 2010, okay -- the idea that the parties couldn't only limit the scope of issues to be arbitrated, but that they could specifically limit with whom they choose to arbitrate

their dispute.

And then in 2013, the Supreme Court issued a very important decision called *Italian Colors*, which if I could just read something very quickly, I think it will help crystallize the issue for your Honor. "Courts must rigorously enforce arbitration agreements according to their terms, including terms that specify with whom the parties choose to arbitrate their dispute. A clause that limits arbitration to the two contracting parties is entitled to rigorous enforcement under the FAA." The Supreme Court of the United States, your Honor.

So what do we have before you in this court? We have an agreement that undeniably -- none of the defendants' trio of letters to the Court dispute this at all, okay -- undeniably, the agreement limits, limits any arbitration to "disputes between the Parties," capital P. That agreement, your Honor, according to *Italian Colors*, has to be rigorously enforced by this Court.

And so what does that mean? What that means is that parties, small P, other than Parties to the agreement, capital P, really can't seek or invoke the arbitration clause in the Parties' agreement. And there have been cases subsequent to *Italian Colors* in this district and elsewhere where the courts have had language like and including "between the parties" and the courts have said, well, we're in a new world now. We're not in the world of these 1980s, 1990s, early 2000 cases that

have been cited to you by the defendants. We're in the *Italian Colors* world and in the *Italian Colors* world, the district court is under an obligation to rigorously enforce a clause that "limits arbitration to the two contracting parties." And that is precisely, precisely what is before your Honor here.

So I understand the defendants' argument and I understand the temptation to say, well, the issues are kind of the same and you're going to have two proceedings going on.

THE COURT: The issues are identical, correct?

MR. KAISER: The complaints are not identical and not all of the claims are identical and the parties are not identical. So, for example, Beechwood Capital is not a party in the arbitration, nor is it an affiliate of Beechwood Reinsurance.

THE COURT: Let me ask in the post-*Italian Colors* world, are there cases that have construed that language in the context of a corporate entity being a party to the arbitration agreement but also the CEO or other principals of the entity as opposed to some other unrelated entity?

MR. KAISER: Yes, absolutely. And I could discuss some of those cases if your Honor wants and provide some citations today.

THE COURT: No.

MR. KAISER: So there have been cases in this district where, for example, an agent who is not an individual, but was

another entity who allegedly made all of the fraudulent representations to the plaintiff that induced the plaintiff to enter into the contract, that that agent sought to compel arbitration on the grounds of agency. And the district court said, first of all, this is an issue now of New York law under *Carlisle*, but I can't do it because under *Italian Colors*, I'm under an obligation to rigorously enforce an agreement that limits arbitration between the two contracting parties.

And so there may be grounds for equitable estoppel here under pre-*Italian Colors* case law; and there may be grounds for agency here under pre-*Italian Colors* case law. But this agreement before me has the "between the parties" language in it and because it has the "between the parties" language in it, I have to rigorously enforce that agreement to limit the arbitration between the two contracting parties.

And I'll add, your Honor, that that is absolutely the right result. Arbitration is a matter of consent and not coercion. And all of these doctrines that have developed over the years that have funny names like equitable estoppel and direct benefits estoppel and alternative estoppel, none of which we ever read about when anyone here was in law school because they didn't exist at the time. But none of these doctrines have any foundation or basis in the concept of consent and courts have noted that.

Judge Kaplan in a well-known case, *Carroll v. LeBoeuf*

Lamb, looked at these doctrines in a case that's just like *Camferdam*, which they cite, where the court compelled arbitration. He said, "The doctrine therefore appears to depend upon the broad federal policy favoring arbitration and considerations of adjudicative economy, not consent." Judge Kaplan is a hundred percent right. The problem, the problem is that starting in 2009, 2010, the Supreme Court started to reemphasize, including *Italian Colors*, that arbitration is a matter of consent, not coercion.

And the bottom line here, your Honor, and we'll argue this in our papers, is that if you deprive the plaintiffs of their constitutional right to a jury trial against Mr. Levy -- who was not even an employee of Beechwood Reinsurance. He worked for another company, B Asset Manager -- and against Beechwood Holding or Beechwood Capital, which isn't even an affiliate; and Mr. Taylor and Mr. Feuer on the basis of agency or estoppel, that it would run afoul of this principle in the case law that arbitration is a matter of consent and not coercion.

THE COURT: So, Mr. Zinn, no matter how good of an idea I may think it is to not have two matters go on fairly parallel tracks, Mr. Kaiser is telling me that you're relying on old-timey authority which is no longer persuasive, so you lose. Or do you?

MR. ZINN: I don't, your Honor, at least I hope I

don't. Let me just be very brief and I just want to reference for the Court two post-*Italian Colors* cases in this district. *Kartagener Enterprises*, Judge Scheindlin. I'm going to quote the case. I'm not going to summarize the case or describe what I think the case means. "Even where an arbitration clause is limited to disputes between the parties, a nonsignatory may be able to compel arbitration of arbitrable issues."

Second case, *Lapina v. Men Women New York Model Management Inc.*, 86 F.Supp.3d 277. Same question, arbitration clause had language that said between the parties. The court permitted the nonsignatory nevertheless to invoke the clause and send the case to arbitration.

THE COURT: Is that a Southern District case?

MR. ZINN: It is, your Honor. I didn't write the name of the judge down and I apologize.

This case is stronger than both of those. This case is stronger than both of those because there's a pending arbitration. There couldn't be a much better record than this case in which a federal court ought to advance the policy under the Federal Arbitration Act favoring arbitration and move the case to arbitration.

And as a matter of fairness, it doesn't make sense. It doesn't make sense. And the reason why there are no decisions that they can cite where there are cases arising in this posture with two parallel cases in this situation, with

the one case against the entity and the other against the president and the CEO, it doesn't make sense to litigate the same case twice in two different fora at the same time with the same issues, the same discovery, the same witnesses. It makes no sense. And so this case actually presents a stronger record to compel arbitration than virtually any case that's been cited by any of the parties in their papers.

And I would note, although I don't know what case Mr. Kaiser was referring to, he referenced a case where the agent sought to compel arbitration. This is a case where the nonsignatory, not the signatory, is seeking to compel arbitration. And the cases they cited in their papers have involved for the most part signatories that are seeking to compel the arbitration, not a nonsignatory like Mr. Taylor is here and like Mr. Feuer is here.

THE COURT: Okay.

MR. LIPSIUS: Your Honor.

THE COURT: Yes, Mr. Lipsius.

MR. LIPSIUS: Thank you. I just feel a couple facts here, I'm not going to get into -- I'll let these two very able attorneys argue the law on this issue, but I feel that some of the facts here are not really clear and have to really be cleared up.

Let's talk about the proceedings in the arbitration. Significant documentation was provided by Beechwood Re prior to

even the commencement of the arbitration and after the commencement of the arbitration. And we're talking about how does that move forward. To the extent that the plaintiffs in this action brought an emergency motion before the AAA to compel additional discovery, not only was that motion denied and not only did the arbitrator, the single arbitrator appointed by the AAA on that issue, find that it was fully produced, but full attorneys' fees were granted to Beechwood Re. So, therefore, they have gotten it. So it has really moved forward. There's even a decision having to do with discovery before there was an impanelment. I think that just goes.

Now, the other thing that's interesting, we've been told about the ownership of Beechwood Re. And in fact I think more importantly, 100 percent of the ownership of Beechwood Re is Mr. Feuer and Mr. Taylor, the defendants in this action. So we're now dealing with the sole shareholders of Beechwood Re, which are now being brought in a second time.

There are a number of other facts that I think may be of interest toward why this should really be in arbitration, this proceeding should be in the arbitration and lend it toward it, but I just suggest to the Court -- and I'm sure these able attorneys will fully brief all of these issues -- that the Court does have the discretion to stay the litigation until the arbitration is resolved. So, as an alternative, that should be

considered as an alternative if the Court is not leading toward dismissing this litigation and forcing the arbitration.

THE COURT: Even if the arbitration proceeds just as to Beechwood Re?

MR. LIPSIUS: Yes. And there is precedent that allows the stay because every deposition that's going to be taken is going to have to be taken otherwise twice. The parties will be bound by their depositions. There's going to be cross-examination. The attorneys here who are representing Beechwood, who are representing the plaintiffs are the plaintiff attorneys in the arbitration. Therefore, you're going to have -- and, of course, in that arbitration, if there's depositions, I can't imagine the principals of Beechwood Re's depositions will not be taken. And there's broad discretion on an arbitration panel which is given the power of the court to subpoena witnesses. So, therefore, those are all things that are going to definitely take place whether this Court or when this Court decides this issue.

And, in fact, in a few days, we're talking about two weeks from now, the panel is going to set a schedule for both depositions, discovery, document discovery, etc. And I assume this Court will give a briefing schedule. The parties I believe have agreed upon a potential briefing schedule in this motion. So by the time this briefing is completed, it is my belief that the discovery will be well along the way and the

arbitration will be very far developed and along the way.

THE COURT: Mr. Kaiser, judges always perk up when provided with an opportunity to do nothing. So I listened very intently as Mr. Lipsius was speaking. What is your position on a stay?

MR. KAISER: Sure. Just a couple of quick points, your Honor.

The arbitration is not well along. The documentation that Mr. Lipsius refers to is documentation that was given to my clients when they exercised their audit rights in June and July of last summer at the insistence of the New York State Department of Financial Services after the Wall Street Journal reported that Murray Huberfeld had an office at Beechwood Re in an article reporting that he had been arrested for allegedly bribing Mr. Seabrook. So the idea that a lot of documents have been handed over in the context of the arbitration is not correct.

THE COURT: How do you anticipate the arbitration will proceed, how quickly?

MR. KAISER: Well, it's a good question, your Honor, because the standard for a stay of a litigation when there's a parallel arbitration in New York is high. The Second Circuit has held, quote, the party seeking the stay has a heavy burden in seeking the stay. And among the things the court looks at is whether the arbitration is expected to conclude within a

reasonable time and that such delays may occur will not cause undue hardship. That's a direct quote from a recent 2013 Second Circuit case.

So the issue of how long the arbitration is going to take is a central issue in this case because if it's going to take years to complete, which it will, then it is completely inappropriate to stay a litigation and deny a plaintiff of his right to his day in court only to have to wait a period of years and start the process anew.

So I get it. I get it. It's convenient for the defendants to say, well, the arbitration is really moving along. We've produced documents. We're going to have a hearing on June 12. No, we're not. We're not having a hearing on June 12. We're having an organizational meeting. It's the first time the parties will be before the panel. And I would be very surprised if the judge, if the arbitration panel sets a discovery schedule or a briefing deadline on any issues.

And just to give the Court just a sense of the enormity of the discovery that's going to be necessary in the arbitration and why it's going to take years to complete, the SEC recently filed a letter with the court in Brooklyn detailing document collection and criminal discovery to date. And in that letter, they revealed that they had served some 76 third party subpoenas on different entities and had over 2 million documents.

THE COURT: Who issued this letter?

MR. KAISER: The SEC.

Now, not all of those third parties are going to be subject to discovery in this case, but a lot of them are. And the reason a lot of them are is because while Beechwood and Platinum are legally separate entities, the reality is, as alleged by the government in the indictment and the SEC complaint and as a bankruptcy court judge in Texas has already found, is that Platinum controlled Beechwood.

Mr. Lipsius says, well, Mr. Feuer and Taylor own all of the stock of Beechwood now, may be true. They didn't last year. Last year when all of the fraud had come to light, the majority of the stock of Beechwood was owned by Murray Huberfeld, under indictment; Mark Nordlicht, under indictment; a guy by the name of David Bodner, criminal record; and Mr. Levy, under indictment, okay; Mr. Feuer and Mr. Taylor, undeniably minority shareholders in Beechwood.

And I think it's another really important point here that's getting lost. In the agency cases they cite, okay, they proceed on the basis that a corporation is a fictional entity and can only act through individuals, a decidedly common sense proposition we would all agree with. So if a corporation or other entity, a legal fiction, breaches a contract and you sue those individuals for engaging in the conduct that caused the breach, well, then under agency principles, if the arbitration

agreement doesn't have the "between the parties" language or similar language, the agents under agency principles can try to latch on because they're saying, look, you're just suing me for engaging in conduct that you contend violates the terms of the reinsurance treaties. We're not alleging that here.

We're saying a year before the reinsurance treaties were entered into, in February of 2014, that our clients were approached by a company called Beechwood Capital. Beechwood Capital was purportedly owned -- and I'm sure it is owned, but we'll find out -- by Mr. Feuer and Mr. Taylor. They said, listen, we don't have a reinsurance company, but we're thinking of forming one, and we're going to put initial capitalization in of $50 million. We're going to own the company. We're going to invest your assets prudently. We're going to surround ourselves with competent professionals and we're going to have a first class reinsurance company that can handle your reinsurance business, some $550 million of assets that were ceded to the defendants as part of this deal.

Throughout the course of 2013, again, ten months, eight months, six months before this agreement was ever entered into, there is a series of fraudulent misrepresentations that are made to the plaintiffs by the defendants.

For example, we have a hundred million dollars in capital. When the New York State Department of Financial Services asked them how much capital they had at inception last

year as part of an exam, it was less than $300,000, not a hundred million dollars.

We don't have any other investors. We own the company, Scott Taylor and Moshe Feuer said. No, you didn't. Mr. Nordlicht, Mr. Huberfeld, Mr. Bodner -- they owned the company, okay.

We're going to conservatively manage your assets to give you good returns and to make sure they're stable because this money backstops policyholder obligations -- not so much, your Honor. They took that money, they invested it in Platinum and companies Platinum owned and controlled.

So we are not saying Beechwood Reinsurance violated Section 7(v) of the reinsurance treaty and they did that through Mr. Feuer and Mr. Taylor and we're suing them for that breach. Far from it, your Honor. We're saying that in the year-long period prior to the time that the contract was entered into, they engaged in a massive fraud against us by lying to us about who owned the company, how much capital they had, what the purpose of the company was they never disclosed. They never disclosed any connection between Beechwood and Platinum until the summer of 2016 when the Wall Street Journal exposed a relationship. And that is what this case is about. It's about the fraud, this massive fraud that was committed by the defendants against our clients.

Is this a case that should be resolved by industry

reinsurance arbitration before three reinsurance arbitrators who make a living arbitrating typical reinsurance disputes? We didn't agree to that. We agreed that disputes between the parties relating to the agreement would be arbitrated. When did we agree to arbitrate these big fraud claims against these individual defendants in Beechwood Capital? The answer is never.

THE COURT: If you win in the arbitration, will you be made whole?

MR. KAISER: No. I'm sure I'll have the largest proof of claim in Beechwood Reinsurance's bankruptcy or Cayman Island liquidation.

MR. ZINN: There's absolutely no basis for that assertion at this point, your Honor. We can sit here and listen to the plaintiffs' lawyers make all sorts of allegations about what the Wall Street Journal might have said or what their complaint says. And, by the way, I don't want to do this to the Court, but what he's saying now is not even consistent with what's in his complaint. So he can go on and on and we'll have our opportunity to defend the case and we intend to do that. I do want to note our objection for the Court. We don't agree with him. We have a different view of the case. And the fact that Mr. Kaiser can make sensational allegations has nothing do with the legal issue before the Court.

There are many cases where RICO claims, like here,

where fraud claims, like here, where fraud in the inducement claims, like here, where Sherman Act violation claims, unlike here, have been sent to arbitration. There's nothing unusual about this case because the plaintiffs happen to have made sensational allegations that we dispute. That happens in many cases and it happens in many cases where there's an indictment where there's some degree of overlap that the plaintiffs can point to.

And typical plaintiffs -- and I understand it. We see it all the time. It's a typical plaintiff strategy. If I were in his shoes, I might do it too. It doesn't resolve the legal issue before the Court -- should this case be in arbitration, should we have two cases or should we have one.

MR. LIPSIUS: More importantly, your Honor, if I can just speak here, we've heard all about why the fraud should be heard in the civil litigation and everything else, the breach of contract should be heard in the arbitration. But interestingly enough, all these fraud allegations are all contained in the arbitration complaint. So if he really believed his own argument, why didn't he just raise breach of contract in the arbitration proceeding. But he's decided and he's made that decision, not he, but his client has made the decision in the arbitration to have all the fraud issues looked at and determined by the panel and, therefore, that decision has been made not by us. And maybe we'd be in a different

posture if he just raised breach of contract in the arbitration and we'd be here and this is fraud, but that's not what happened.

If you look at the original complaint, they are almost, I should said exactly the two complaints are in the litigation and in the arbitration are identical. And he made a few changes, if you look at the changes in the amended complaint. And the major change was he said, oh, let me think -- this is what I believe is happening. They look there and they say let me get another party that I can come there, squeeze a party that's in there, Beechwood Capital Group. And if he knew about it then, he should have known about it in his original complaint. This is nothing that came out in any of the indictments, which is what we were told about.

As the Court itself noted, Beechwood is not under any -- no Beechwood, current Beechwood officer, namely, Mr. Feuer and Mr. Taylor, are not under indictment. Beechwood itself is not a party with the SEC action or the indictments, etc. These are really a tale that's been spun here. And, one, the pleadings don't match even half of the tale that's said. And, second of all, the truth is not what's in these pleadings. And I think you just look at the two pleadings and it begs to not have two courts doing it.

The last issue is one that I cannot think of one witness that would be deposed in this action that would not be

deposed as well in the arbitration action, and an arbitration panel is given subpoena power to get them. So there's nothing lost by having the discovery and everything done through the arbitration panel. And when the decision comes down, if the Court then deems it necessary, the Court can then determine whether to lift the stay.

MR. ZINN: Judge, I just want to be clear. Our argument is not that the original complaint and the demand for arbitration are the same. They were. They were identical. They were verbatim. But the amended complaint also raises the same issues. I have a chart I prepared -- I can save it for future argument; I'm happy to hand it up to the Court -- that demonstrates verbatim taking quotes from the demand and from the amended complaint. The theory of the case is the same. The factual allegations are the same. There is largely uniform overlap in terms of the causes of action. And the damages that are alleged are the same. It's the same case.

THE COURT: I discerned from everything that has been argued that there is no consent on staying this proceeding. So forward we will go.

The parties, I understand, have agreed to a briefing schedule?

MR. KAISER: We have, your Honor.

THE COURT: And tell me what it is.

MR. KAISER: Yes. So the defendants' initial papers

will be due June 15, our opposition papers July 24, and the reply brief August 15. And we penciled in argument for August 15. So that's the schedule. It's June 15, July 24, August 14.

MR. ZINN: Your Honor, may I be heard on that. I agree with his rendition of the briefing schedule. We didn't discuss when argument might be and I haven't conferred.

MR. KAISER: I was joking about the argument.

THE COURT: There is no -- and I typically don't hear oral argument unless I find there's some particular need for it.

Just one comment on what Mr. Lipsius said earlier about the depositions, etc. To the extent these matters go forward on parallel tracks, I assume that the parties will see it in both of their interests or in all of your interests to coordinate discovery with respect to both. Not that I'm saying that both will go forward on parallel tracks, but to the extent that they will, that that concern can be easily addressed by cooperation amongst the parties. So maybe not so easily addressed, but possible.

Okay. So we have all of the dates. Is there anything else that we need to do today, Mr. Kaiser?

MR. KAISER: No, your Honor.

THE COURT: Mr. Zinn.

MR. ZINN: No, your Honor. Thank you.

THE COURT: Mr. Lipsius.

MR. LIPSIUS: No, your Honor, I just want to make clear that with the motions pending, there will not be answers necessary.

THE COURT: Correct.

MR. LIPSIUS: Okay.

THE COURT: Anyone else, Mr. Fodeman?

MR. FODEMAN: No, Judge. Thank you very much.

THE COURT: Okay. We're done. Thank you folks. It's been very helpful.

MR. LIPSIUS: Have a wonderful Memorial Day.

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